

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRANK MONACO BAZZO,

Plaintiff,

v.

S. GATES, et al.,

Defendants.

Case No. 1:21-cv-01343-ADA-CDB (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS CERTAIN CLAIMS**

(Docs. 24-26)

Plaintiff is proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

I. RELEVANT PROCEDURAL BACKGROUND

On March 22, 2023, this Court issued its First Screening Order. (Doc. 25.) The Court found Plaintiff's first amended complaint (Doc. 24) stated cognizable Eighth Amendment conditions of confinement and deliberate indifference to serious medical needs claims against Defendants Gates and Bobbola, and the unknown Does 1 through 5, but failed to state any other cognizable claims for relief against any other defendant. (*Id.* at 6-15.) Plaintiff was given 21 days to elect one of the following options: (1) to file a second amended complaint curing the deficiencies identified in the order; (2) to notify the Court of his willingness to proceed *only* on the claims found cognizable by the Court; or (3) to file a notice of voluntary dismissal. (*Id.* at 15-16.)

On March 31, 2023, Plaintiff filed a document titled “Plaintiff’s Reply to Court’s First Screening Order.” (*See* Doc. 26.) Plaintiff notifies the Court that he “stipulates that he does NOT wish to file any amendments or any other claims not already claimed.” (*Id.* at 2.) Further, Plaintiff notes that he “DID comply with the Unruh Civil Rights Act by presenting the ‘GATES’ claim to the California’s Government Claim Office, thus complied with CTCA pursuant to CA Gov. Code section 810” (*Id.*) To the extent Plaintiff is objecting to the Court’s finding that Plaintiff had failed to state a cognizable state law claim (*see* Doc. 25 at 14-15), Plaintiff is informed that he is free to raise this objection in response to the instant findings and recommendations.

II. FINDINGS AND RECOMMENDATIONS

Accordingly, and for the reasons set forth in the Court’s First Screening Order (Doc. 25), the Court **RECOMMENDS** that:

1. This action PROCEED on Plaintiff’s Eighth Amendment conditions of confinement and deliberate indifference to serious medical needs claims against Defendants Gates and Bobbola, and unknown Does 1 through 5; and
2. The remaining claims in Plaintiff’s first amended complaint be DISMISSED.

These Findings and Recommendations will be submitted to the United States District Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). Within 14 days of the date of service of these Findings and Recommendations, a party may file written objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may result in waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: April 10, 2023


UNITED STATES MAGISTRATE JUDGE